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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

18-cr-36-4 (JPO)

5 CYNTHIA HOLDER,

6 Defendant.

Sentence

7 -----x
8 New York, N.Y.
9 August 9, 2019
11:05 a.m.

10 Before:

11 HON. J. PAUL OETKEN

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the
Southern District of New York

16 BY: JORDAN ESTES, ESQ.

17 Assistant United States Attorney

18 THOMPSON HINE LLP

19 Attorneys for Defendant

BY: NORMAN A. BLOCH, ESQ.

EMILY J. MATHIEU, ESQ.

Also Present: Christopher O'Rourke

Inspector, U.S. Postal Inspection Service

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1 (Case called)

2 THE CLERK: Starting with the government, counsel,
3 please state your name for the record.

4 MS. ESTES: Good morning, your Honor. Jordan Estes
5 for the government. And I'm joined at counsel table by
6 Christopher O'Rourke, an inspector with the United States
7 Postal Inspection Service.

8 THE COURT: Good morning.

9 MR. BLOCH: Norman Bloch and Emily Mathieu for
10 Ms. Holder.

11 THE COURT: Good morning.

12 MR. BLOCH: Good morning, your Honor.

13 THE COURT: We're here for sentencing in this case.
14 Ms. Holder pleaded guilty on October 16, 2018 to the four
15 counts against her in the indictment: Count One, conspiracy to
16 defraud in the United States; Count Two, conspiracy to commit
17 wire fraud; and Counts Four and Five, which are wire fraud
18 counts.

19 I want to start by making sure I've reviewed
20 everything I should have in preparation for today. I've
21 reviewed the presentence report, with an addendum and
22 sentencing recommendation by probation; submission by defense
23 counsel dated July 3rd, with several letters from the
24 defendant, as well as from family members and friends, all of
25 which I've read and certain other exhibits attached to the

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sentencing memorandum; submission by the government dated July 10; the victim impact statement by the PCAOB dated June 4. I've also considered and reviewed the parties' filings regarding the guidelines loss amount and restitution issues, including Mr. Bloch's July 30 letter adopting Mr. Middendorf's arguments on those issues, and the parties' arguments presented at the August 1st hearing on those issues.

Do I have everything I should have?

MS. ESTES: Yes, your Honor.

MR. BLOCH: Yes, your Honor.

THE COURT: Mr. Bloch, have you read the presentence report and discussed it with Ms. Holder?

MR. BLOCH: Yes.

THE COURT: And, Ms. Holder, have you had a chance to review the presentence report and discuss it with your lawyer?

THE DEFENDANT: Yes, your Honor.

THE COURT: Ands Ms. Estes, have you reviewed the presentence report?

MS. ESTES: Yes, your Honor.

THE COURT: I know there are a number of guidelines issues. Putting aside the guidelines issues, are there any objections or issues we need to address with respect to any of the factual statements in the PSR?

MR. BLOCH: Your Honor, with respect to paragraphs 34, 36, and 38 of the presentence report, those are paragraphs that

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1 relate to the cover-up that occurred at the end of the activity
2 in this case, and our difference with the PSR's
3 characterization, which adopts the government's, is that it
4 casts Ms. Holder as the controlling mind of the cover-up and
5 Mr. Sweet as her subject or doing whatever it is that she said
6 to do. That's what Mr. Sweet testified at trial. It wouldn't
7 be the first time, your Honor, that a cooperator has sought to
8 shift blame onto others for their activity. And Ms. Holder
9 certainly doesn't deny that she participated in the cover-up,
10 that some of the things that happened were her idea. Some of
11 the things were Mr. Sweet's idea. Some of the things were
12 jointly decided. So in the interests of, from our position, as
13 a matter of accuracy, those paragraphs are not accurate because
14 Ms. Holder disputes that it was she who thought up something as
15 opposed to Mr. Sweet.

16 Having said that, your Honor, I would suggest that we
17 just agree to disagree, because, in the end, since we certainly
18 admit participation in the cover-up, they're not really
19 significant factual disagreements.

20 THE COURT: Did you want to add anything, Ms. Estes?

21 MS. ESTES: No, your Honor. That's fine. I would say
22 that the paragraphs are based on sworn testimony that Mr. Sweet
23 provided and there's been no sort of sworn testimony to
24 contradict that. But I think it's fine to agree to disagree in
25 this respect.

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1 THE COURT: OK. So it's not a formal objection to
2 change anything in the presentence report, but it's something
3 I'll take note of in terms of assessing the overall state of
4 affairs and culpability. Is that fair?

5 MR. BLOCH: Yes, your Honor.

6 THE COURT: OK. With that I'll deem that objection
7 sufficiently dealt with and not requiring a change in the
8 presentence report.

9 As a general matter, I adopt the facts set forth in
10 the presentence report as my findings of fact. I'm obviously
11 relying on Ms. Holder's allocution at the plea hearing and also
12 the other information and evidence that I reviewed during the
13 course of the trial, co-defendants Mr. Middendorf and Mr. Wada.

14 And now let's turn to the sentencing guidelines. I
15 believe there are just four issues in the guideline calculation
16 that the parties disagree with and in one respect disagree with
17 the Probation Department. The sentencing guidelines are
18 important because, in every federal sentencing, we need to
19 start with an accurate calculation of the sentencing
20 guidelines. They are no longer mandatory, so I am allowed to
21 go below or above the sentencing guidelines, but they are
22 legally required to be a starting point, or a benchmark, for
23 determining a sentence. And they're incredibly complicated. A
24 lot of things go into it. You start with a base offense level
25 and you add or subtract points for various reasons, having to

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1 do with the seriousness of the offense and other related
2 issues, and then you put it up against the criminal history
3 category of a given defendant, which in this case, of course,
4 Ms. Holder has no criminal convictions in her life other than
5 this case. And then you come up with a recommended guideline
6 range.

7 So I want to address the issues. And I'll let you --
8 well, I think, with respect to all of them but one, I think I'm
9 just prepared to rule, and if you want to say anything else on
10 the one, which is the obstruction of justice, I'll let you talk
11 about it. The first one is, with respect to the grouping of
12 offenses -- and on that one I agree with both the defendant and
13 the government, contrary to the Probation Department, that
14 Count One is properly grouped separately from Counts Two, Four,
15 and Five. Count One involves a conspiracy to defraud the
16 United States, specifically by interfering with a function of
17 the SEC, and does not involve a loss to the SEC, at least a
18 pecuniary loss, or economic loss. The offense level for Count
19 One, unlike the other counts, is not "determined largely on the
20 basis of the total amount of harm or loss," as stated in
21 guidelines section 3D1.2(d). Count One is in the nature of an
22 obstruction or interference type of offense, and therefore it
23 is not of the same type as the other counts, which are fraud or
24 theft type offenses. And therefore I'm not grouping them
25 together, as the Probation Department does, but, rather, doing

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1 it the way the *Pimentel* letter in this case did.

2 Next is the loss amount. We've had extensive
3 discussion about the loss amount, both in paper and at the
4 August 1st hearing, and I believe I'm prepared to rule on it.
5 Is there anything you need to add, Mr. Bloch? I think there's
6 been plenty of paper shed on this.

7 MR. BLOCH: Yes, your Honor. I think there's nothing
8 else to be said on that point.

9 THE COURT: OK. And, Ms. Estes, anything else you
10 want to add on that?

11 MS. ESTES: No, your Honor.

12 THE COURT: All right. The guidelines, specifically
13 Section 2B1.1, define loss as "reasonably foreseeable pecuniary
14 harm" from the offense. "Pecuniary harm" in turn is defined as
15 "harm that is monetary or that otherwise is readily measurable
16 in money." The Court need only make a reasonable estimate of
17 the loss. That's under 2B1.1, comment 3C.

18 This case involved a misappropriation and use of
19 confidential PCAOB information, in particular its confidential
20 inspection lists, which were central to its regulatory
21 function. As the Court has already held, this information was
22 property that had value. And the defendant's misappropriation
23 and use of it caused actual harm to the PCAOB.

24 Now, admittedly it is not easy to quantify and measure
25 that harm. Certainly the reputational harm to the PCAOB and

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1 the harm to its regulatory mission are not easily measured.
2 But distinct from those harms was a harm to the PCAOB of the
3 actual loss from its confidential work product in developing
4 the lists to carry out its function. Substantial time and
5 expertise of PCAOB personnel was wasted as a result of the
6 misappropriation and use of these confidential inspection
7 lists. Although this was not an out-of-pocket loss to the
8 PCAOB, it clearly resulted in a diversion of resources in the
9 form of employee time. And I find that, while that is not an
10 out-of-pocket monetary loss to the PCAOB, it is nevertheless an
11 economic loss and one that is reasonably measurable in money
12 for purposes of the guidelines.

13 Now, the PCAOB has provided evidence that establishes
14 a basis for a reasonable estimate of this loss. There are
15 development costs, which is an estimate of the employee costs
16 incurred by the PCAOB in developing the investigation lists.
17 And then there are response costs, which is an estimate of the
18 cost to the PCAOB of recreating the 2017 inspection lists and
19 the cost of additional reviews for 2016. The government argues
20 that either of these provides a reasonable estimate of loss to
21 the PCAOB.

22 I agree with the defendant that including both
23 development costs and response costs in the loss amount may
24 overstate the loss amount. I find that the response-costs
25 measure provides the most reasonable estimate of the loss to

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1 the PCAOB. These response costs reflect the most direct
2 measure of the wasted efforts of PCAOB personnel because they
3 represent the work that the PCAOB reasonably determined had to
4 be done to remediate the harm caused by the misappropriation
5 and use of the inspection lists. While development costs are a
6 good measure in, for example, a trade secret case, the
7 confidential information here is further removed from the kind
8 of information that has value because of its marketable value,
9 and a better proxy for the loss here is the type of cost
10 described in the guidelines in analogous situations, the cost
11 to the victim entity of replacing the property, which is
12 mentioned in 2B1.1, application note 3(C)(i), or repairing
13 damaged property, which is at 3(C)(iii), or, as in government
14 procurement fraud cases, the cost to the government, including
15 specifically administrative costs, of repeating or correcting
16 the compromised procurement process. And that's mentioned in
17 3(A)(v)(II).

18 With respect to the response costs, the PCAOB has
19 provided a reasonable estimate of its costs. To create the
20 replacement inspection list for 2017, the estimated cost was
21 \$262,613, and to conduct the ten additional reviews for 2016,
22 the cost was \$567,228. And that is described and supported at
23 Cook declaration, paragraph 11D and E, and the supporting
24 exhibits.

25 I am not persuaded by defendant's arguments that these

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estimates are unreliable or inadequately supported. All that is required for purposes of the guidelines is a reasonable estimate, and these are reasonable estimates. In certain respects, in fact, they are conservative.

Nor am I persuaded by defendant's argument that there was no loss to the PCAOB because these were salaried employees. As I've explained, this was an actual economic loss, in terms of the PCAOB's resources. It is estimable and measurable. A salaried employee's hourly rate, with a 1.25 multiplier to account for overhead costs, is a reasonable measure for the cost to the PCAOB of employing an individual. This reasonable estimate of loss under the sentencing guidelines is supported by common sense and by the Second Circuit's decision in *United States v. Burns*, 104 F.3d 529 (2d Cir. 1997). Therefore, I find that the reasonable estimate of loss to the PCAOB from the defendant's criminal conduct is \$829,863. That is the total of the response costs in conducting additional reviews for 2016 and recreating the inspection list for 2017.

The next disputed issue is minor role adjustment under the guidelines. I'm not persuaded by the defense argument that she should receive a minor role adjustment. It is clear from the trial of Mr. Middendorf and Mr. Wada that Ms. Holder played an important role in the offense. She was Mr. Wada's direct contact at KPMG, so she served as a critical conduit in passing this information to KPMG, where she knew it would be used. As

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1 a former PCAOB employee, she certainly knew that it was highly
2 confidential information, and she participated in some of the
3 re-reviews in which KPMG used the confidential information.

4 The last issue for guidelines purposes is obstruction
5 of justice points. The issue with this -- I want to give
6 Mr. Bloch a chance to say anything else that you wanted to say
7 because the government has responded to your points by saying,
8 well, she talked about using burner phones, she talked about
9 communicating outside for KPMG communications, and none of that
10 really would be focused on an internal investigation but by
11 nature had to do with avoiding detection by the authorities.
12 So if there's anything you wanted to add on that, you may.

13 MR. BLOCH: I do, your Honor.

14 With respect to that particular issue, at the time the
15 office of general counsel of KPMG had been asking on more than
16 one occasion for the cellphone records of Mr. Sweet and
17 Ms. Holder. So it's not an idea that there's some sort of
18 wiretapping that they're concerned about by a criminal
19 investigation, but, rather, not having a record of their
20 cellphone communications on that particular point.

21 But more generally, your Honor, the government in its
22 response basically pointed to the idea that because Ms. Holder
23 had been an FBI agent for eight months more than 22 years ago,
24 that this somehow made it foreseeable for her that there would
25 be a criminal investigation, because that's what the

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1 guidelines, for purposes of the guidelines obstruction, it's
2 talking about purposely thwarting a criminal investigation.
3 And that just doesn't make any sense on the record. It doesn't
4 make any sense as a matter of logic or common sense. Whatever
5 Ms. Holder -- I mean, the cover-up itself, in looking back,
6 your Honor, I suggest it's almost comical to come up with a
7 preposterous story about the amount of e-mail, deleting things
8 that people know could be recovered. It just doesn't make
9 sense that whatever Ms. Holder learned at a time in the 1990s,
10 in her brief time at the FBI, somehow informs her thinking that
11 there's going to be a federal criminal investigation. And
12 indeed, your Honor, there was no federal criminal investigation
13 at the time that the conduct took place. Nor was it foreseen.
14 I have to say, your Honor, I was representing Ms. Holder at the
15 beginning of March, and it certainly wasn't foreseen to me.
16 And the investigation didn't begin until mid April of 2017. So
17 that linkage, your Honor, doesn't accord with common sense.

18 Further, at the trial of Mr. Middendorf and Mr. Wada,
19 Brian Sweet was asked, what was your purpose in doing all this.
20 He said it was our purpose to protect Jeff Wada. And
21 Ms. Holder and Mr. Sweet at that time were in frequent
22 communication. They were talking about what was happening in
23 the internal investigation. No one had said anything about a
24 criminal prospect in the future. Indeed, KPMG ultimately
25 reported the misconduct, not to the Southern District of New

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1 York but to its regulators, the PCAOB and the SEC.

2 THE COURT: But that was a federal regulator. They
3 brought it up to the general counsel, who was a former federal
4 judge, and they immediately self-report to the PCAOB. I mean,
5 I would think that the prospect of a federal investigation was
6 on people's minds. No?

7 MR. BLOCH: Well, your Honor, again, there's reality
8 and the guidelines. The guidelines talk about a criminal
9 investigation. I mean, obviously there's going to be an SEC
10 investigation, possibly a PCAOB investigation. But my point is
11 that we're trying to figure out what was in Ms. Holder's mind
12 at that time. And the only thing that I can point to is the
13 testimony of Mr. Sweet. If they, Mr. Sweet or Ms. Holder, had
14 been contemplating a federal criminal investigation, that would
15 have been known to the government, would have been disclosed to
16 the defendant as being material, and would have been elicited
17 in testimony from Mr. Sweet that that's what their purpose was
18 in going through the machinations at the end of February 2017.

19 So, as a matter of evidence, it's not there as to what
20 their purpose was in doing this.

21 Now, again, your Honor, we're talking about the
22 guidelines. The reality is, of course it was a cover-up, and
23 that still was their purpose, and it's certainly something the
24 Court can consider in terms of fashioning the appropriate
25 sentence. The guideline purpose of adding the two points, I

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1 would submit, your Honor, the evidence is just not there.

2 THE COURT: Ms. Estes, would you like to respond?

3 MS. ESTES: Yes, your Honor. First, I would note that
4 application note 1 to guideline 3C1.1 expressly states that the
5 obstructive conduct can happen prior to the start of the
6 investigation. And that is just what happened here. I mean,
7 what matters is that, as your Honor noted, it was very clear
8 this is the sort of thing that is going to be investigated by
9 regulators, by the SEC, by the PCAOB, ultimately by criminal
10 authorities. And Ms. Holder and Mr. Sweet, whether or not they
11 were trying to protect Mr. Wada, they could be trying to
12 protect Mr. Wada in a lot of respects: in the internal
13 investigation, in an SEC investigations, in a criminal
14 investigation.

15 THE COURT: Do you think that that guideline, it
16 applies only if it's more likely than not that the person was
17 thinking about a criminal investigation, or do you think that
18 that language in the application note covers a broader swath of
19 conduct, where there clearly was interference with an
20 investigation that became a criminal investigation? Do they
21 have to know that it was likely to become one?

22 MS. ESTES: Your Honor, I think all that matters is
23 that they willfully act to destroy evidence and do something in
24 some way to obstruct justice. I mean, it's probably often not
25 in somebody's head immediately after they do something, like

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1 all of the many consequences that there may be. The point is
2 that Mr. Holder and Mr. Sweet were acting to avoid getting
3 caught in what they knew was serious wrongful conduct that did
4 lead to a criminal investigation.

5 I mean, I think here we have another reference to
6 "willfully" in the guidelines here. And we would submit that
7 that just shows they knew they're choosing to obstruct justice,
8 to willfully destroy evidence. They're asking somebody to lie.
9 They're doing that knowing it's wrong to do that. And that's
10 what Ms. Holder and Mr. Sweet did. And it was a natural
11 consequence that that would affect a criminal investigation.

12 THE COURT: OK. I understand point of Mr. Bloch, but
13 I do believe that under my reading of the guidelines, it does
14 call for the two points for obstruction, because the defendant
15 did take steps to destroy and hide evidence of this offense and
16 to misstate certain facts to KPMG's counsel in its internal
17 investigation, and also communicated with Mr. Sweet and
18 arguably coached Mr. Sweet to misstate facts and to avoid
19 detection. I understand the argument that this was limited to
20 the private internal investigation and did not extend to the
21 federal criminal investigation. However, I think that it is
22 covered. I mean, this is clearly an internal investigation
23 that led to a criminal investigation. It's all the same
24 conduct we're talking about. And I think in that way the
25 attempt to destroy and hide evidence was willful obstruction in

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1 the sense that it was an attempt to hide evidence knowing that
2 such hiding was wrong.

3 I also think, as an alternative, that it's likely that
4 the prospect that a federal investigation would be coming is
5 something that people, including Ms. Holder, knew was a
6 significant possibility.

7 So I do add the two points.

8 So my ultimate guideline calculation -- and then I'll
9 give you a chance to speak overall to the 3553(a) factors --
10 the guideline calculation is, there are two separate groups.
11 Count One is group 1. The base offense level for group 1 is
12 12, under Section 2C1.1(a)(2). And that's a total offense
13 level of 12 for that group. Group 2 is Counts Two, Four, and
14 Five grouped together. And the base offense level is 7, under
15 2B1.1(a)(1) and 3D1.3(b). Because the loss amount exceeded
16 \$550,000, for the reasons I've discussed, the offense level is
17 increased 14 levels to 21, under 2B1.1(b)(1)(H), and the total
18 offense level is 21. The combined offense level is 21, under
19 3D1.4(c), because group 1 is nine levels below group 2. There
20 is an increase of two points for abuse of position of public or
21 private trust in a manner that significantly facilitated
22 commission or concealment of the offense under 3B1.3. And
23 there's an increase of two points for obstruction, as I
24 mentioned. So that results in 25. And because the defendant
25 accepted responsibility and did so in a timely manner, there is

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1 a decrease of three points.

2 The total offense level is therefore 22. And with a
3 criminal history category of I, because Ms. Holder has no prior
4 convictions, the guideline range is 41 months to 51 months'
5 imprisonment and a fine of 15,000 to 150,000 dollars.

6 Now, as I said, there's no mandatory minimum in this
7 case, so the 41 to 51 months' imprisonment is simply the
8 advisory guideline range and I need to consider that, but also
9 all the other factors in Section 3553(a), which I'll give the
10 parties a chance to talk about.

11 So you've all written submissions. There have been
12 additional letters. I've read everything. But if there's
13 anything you would like to highlight today, I'll give you a
14 chance to do that, starting with Mr. Bloch.

15 MR. BLOCH: Yes, your Honor. I wanted to take the
16 opportunity to address several of the things in the
17 government's submission as well as to highlight several of the
18 factors that we talk about in our sentencing submission.

19 Your Honor, it would be easy to sentence if all the
20 factors pointed one way or the other. And that didn't happen
21 here. And so there are a lot of different things that I'm sure
22 the Court is taking into account in fashioning the appropriate
23 sentence.

24 With respect to what the government has submitted in
25 support of its request that the Court would impose a guideline

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1 sentence of 51 to 51 months, their submission essentially boils
2 down to four things: First, the government points out that
3 this is an incredibly serious offense. I'm not sure what the
4 difference between "incredibly serious" and "serious" is, but
5 there's no doubt and no one on this side of the courtroom has
6 sought to minimize the seriousness of the conduct here. It is
7 a compromise of the PCAOB's inspection process. Trust was
8 breached. Confidentiality was compromised. And as a
9 collateral consequence, many people's lives have been hurt by
10 all of that.

11 But, your Honor, we ask that you also take into
12 account the perspective that goes with this offense, especially
13 how it gets put through the guidelines calculation. Whether or
14 not there's a loss is a matter of estimating economic loss.
15 The fact of the matter is, undisputed by the government, that
16 this was not financially motivated. Money had nothing to do
17 with this offense, neither given, received, expected. And in
18 that regard, your Honor, this offense is really almost unique
19 in what ordinarily comes through the courthouse doors. This is
20 not a Ponzi scheme. There are no individual victims,
21 vulnerable victims who have lost money. It's not an insider
22 trading case where Ms. Holder profited using confidential
23 information. None of that fits into this case. And as we
24 mentioned or argued in our sentencing memorandum, it cannot be
25 that the offense conduct here, which your Honor has determined

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had a guidelines value, if you will, of over \$800,000, that that would be treated the same way as someone who actually profited by stealing that kind of money from a vulnerable victim or making it in an insider trading case.

So that, while serious, your Honor, doesn't justify -- we talk reality now or as 3553 factors are concerned -- a lengthy, lengthy sentence, which is produced by the guidelines analysis.

Second, your Honor, the government has suggested that because Ms. Holder is a former FBI agent, that she somehow should be held to a higher standard. And I want to put again that in perspective as well. She was an agent for a total of eight months, four months in training, four months in the field, more than 22 years ago. She's not accused of being a corrupt agent. She didn't reveal an informant in exchange for money. She didn't throw a case in exchange for money. And the notion that she should be held to a higher standard because she had that position so many years ago is not logically connected to what we are doing here today.

What is proper is that Ms. Holder should be held to the standard that we all accept: her ethical standards as an accountant and, particularly, the ethical rules about confidentiality by the PCAOB. Those are the standards that are applicable. And she breached them. We're not here to say she didn't. But to add more on the negative side because she had

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1 been an agent, I submit, your Honor, you should reject that
2 argument that the government has made.

3 Third, your Honor, the government says that this
4 lengthy sentence should be imposed because it would promote
5 general deterrence. And, your Honor, since last week, we've
6 seen cases where judges have said, imposing a prison sentence
7 for general deterrence, in particular with insider trading,
8 which has gone on for 20 years -- it doesn't seem to have been
9 deterred. And, your Honor, in this situation, recent studies
10 and the National Institute of Justice, which is an arm of the
11 Justice Department, have pointed out that what deters people
12 from committing crime is certainty of apprehension, not lengthy
13 punishment or incarceration. That is, it's the fear of getting
14 caught that makes a difference.

15 And in addition, your Honor, in this particular case,
16 we're talking to a relatively small universe of people. We're
17 talking to accountants. The message should be that accountants
18 should not be violating their ethical duties and
19 responsibilities and disclosing confidential information
20 inappropriately.

21 And in terms of promoting general deterrence, your
22 Honor, there has been publicity here. We pointed it out in our
23 memorandum. It's not simply in the *Wall Street Journal* or in
24 *Bloomberg* or publications with widespread circulation, but
25 particularly in the accounting profession, where one could be

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1 reasonably certain that people know about this case and know
2 about what can happen, and it's not simply the fear of being
3 sentenced to prison for over three years; it's losing your
4 license, losing your career, being punished by the SEC, in this
5 instance having a criminal record. Nothing, nothing will be
6 added under general deterrence if this Court imposes a sentence
7 of imprisonment.

8 And the fourth point that the government makes is that
9 there should be this guidelines sentence imposed because there
10 would be specific deterrence, that Ms. Holder will be deterred
11 from breaking the law in the future if she is sentenced to jail
12 for all those years. Well, your Honor, I don't have as many
13 clients as you've sentenced while you've been on the bench, but
14 I would suggest to the Court that it would be hard pressed to
15 find another defendant who has appeared here who is less likely
16 to commit a crime in the future. And indeed, when we talk
17 about the National Institute of Justice, they point out that
18 people like Ms. Holder, especially first-time offenders who go
19 to prison, actually learn more about how to be a criminal and
20 increase the rate of recidivism than if they were not exposed
21 to fellow prisoners in jail.

22 So those are the four arguments basically that the
23 government has made as to why the guidelines sentence should be
24 imposed.

25 Now, your Honor, on our side of the ledger, we have

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1 brought to the Court's attention a number of factors that are
2 mitigating and positive with respect to Ms. Holder. And I only
3 want to highlight three of them right now. The first, your
4 Honor, is Ms. Holder's cooperation. And while we're not in a
5 situation where a defendant has gone down to have a proffer
6 with the government and for whatever reason the government
7 says, we don't want to have you signed up and become a
8 cooperating witness, and so counsel comes before the Court and
9 says, well, we tried -- that's not this case. And the reason
10 it's not this case is because the government never asked,
11 twice, never accepted our offer to be even interviewed. And
12 we're not here, your Honor, to debate that point. The
13 government owes nobody an explanation as to why they chose to
14 proceed in the way they did. And I'm not asking for one. But
15 we are here to say that despite the government's position,
16 Ms. Holder engaged in a longterm, much longer, almost as long I
17 should say as the activity in this case, of being
18 cooperative -- being cooperative to the PCAOB, being
19 cooperative with KPMG, being cooperative with the U.S.
20 Attorney's Office -- without ever receiving or asking for a
21 promise from the U.S. Attorney's Office.

22 Now, I want to point out, your Honor, two things in
23 particular, sort of the bookends of her cooperation. The first
24 is that on March 17th of 2017, she voluntarily cooperated with
25 the PCAOB. The PCAOB had called and asked to speak with her.

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1 And of all the players in this story, she is the only one who,
2 outside the PCAOB, who spoke to their counsel in connection
3 with their internal investigation. And today, looking back, it
4 obviously was significant. It was significant because
5 Ms. Holder, for the first time and only time as far as the
6 PCAOB is concerned, directly identified Mr. Wada as the source.
7 And at that time, there were questions about whether there were
8 other leads by other people or to other accounting firms, none
9 of which turned out to be the case. But Ms. Holder was there
10 17 days after being put on administrative leave, after having
11 engaged in the cover-up that we talked about. She turned
12 around right there. And we did ask, your Honor, we asked the
13 PCAOB, before the interview took place, please tell Court about
14 the nature and quality of her cooperation. And their outside
15 counsel has submitted a letter, which we attached, stating that
16 Ms. Holder provided material assistance to them.

17 That's the first thing, your Honor. The other side of
18 the chronology had to do with iCloud data. And that data
19 voluntarily was provided by Ms. Holder to the government in
20 November of 2017, months before there was the indictment --
21 again, without any promises. And for whatever reason, the
22 government was delayed in analyzing it or being able to turn it
23 into visual material, whatever it was. But it came time before
24 the trial, in January or February, January and February of '18,
25 when the government came to Ms. Holder and said, we want your

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1 help, we need your help, to understand the iCloud material.
2 And we detailed in our submission what was provided. And, your
3 Honor, we sat through the trial. I characterized that
4 evidence: the voicemail, the text messages. iCloud was more
5 inclusive than what was on her phone which she voluntarily
6 provided. The government has not denied, they admit that
7 everything she did, as far as her cooperation, as we reported
8 it in our sentencing memorandum, it was crucial, valuable
9 evidence. It was used by the government in summation. It was
10 introduced. I mean, it was extremely helpful.

11 And, your Honor, that on one end, the cooperation with
12 the PCAOB at the other end, and things that happened in between
13 are significant factors. I submit, your Honor, you do not see
14 many defendants come before you who voluntarily do all these
15 things without having a cooperation agreement with the
16 government. And it is done here because Ms. Holder, not just
17 in a letter, in terms of accepting responsibility,
18 demonstrating remorse, and trying to rectify that which had
19 happened, was wrong and she can't take it back. That's the
20 first factor, your Honor.

21 The second factor is the collection of cases that we
22 submitted to the Court having to do with similar defendants in
23 similar cases. And that's in the category of there being
24 unwarranted disparities in sentencing. And we provided the
25 Court with six cases, four of which are in the Southern

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1 District of New York, all of which involve theft of
2 confidential information from the Federal Reserve, which, for
3 the purposes of this proceeding, is very closely analogous. In
4 many of those cases, all of them but one, the defendant was
5 permitted to plead to a misdemeanor. In all of them, the
6 defendant received probation except one case. And in one of
7 those cases, the defendant lied to the FBI, I believe, in the
8 investigation.

9 The government has not denied that those are similar
10 cases. And I would submit, your Honor, that to sentence
11 Ms. Holder to the incarceration of the guidelines
12 recommendation, let alone any incarceration, would create an
13 unwarranted disparity between Ms. Holder and those defendants.
14 Now, again, there's prosecutorial discretion as to who can do
15 what, where, and when. But that's not what we're talking
16 about. But the actual outcome in those cases, on facts that
17 are very similar, it would be unwarranted to treat Ms. Holder
18 more harshly than those defendants were treated.

19 And third, your Honor, with respect to Ms. Holder's
20 history and character, what she does in her life, which is not
21 defined by this case, what happened here, long before this
22 case, she demonstrated over and over again her willingness to
23 put her interests above -- excuse me -- her willingness to put
24 others' interests above her. She's provided time. She's
25 provided money. She's provided help to people she doesn't even

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1 know, let alone her friends and her family. We've gone into
2 those things in detail, your Honor, in our sentencing
3 submission. They are detailed in the letters that we have
4 submitted to the Court on Ms. Holder's behalf. And many of
5 those people are here in the courtroom today: her wife, her
6 father, her stepfather, her brother. Those friends, the people
7 who are close, those people -- I mean, if you heard it from an
8 individual, you would say, oh, no one could be this good, but
9 these people reported separately and over and over again how
10 altruistic and caring Ms. Holder is as a human being. And,
11 your Honor, I submit that that factor counts for a lot when
12 we're before the Court for sentencing.

13 So for all those reasons, and also what we've
14 expressed in our sentencing memo, we do ask, as we did in the
15 memorandum, that the Court sentence Ms. Holder to probation
16 with community service.

17 Thank you.

18 THE COURT: Thank you.

19 Ms. Estes.

20 MS. ESTES: Yes, your Honor.

21 First, I want to address Mr. Bloch's point about the
22 other cases they cited in their sentencing memo. To be clear,
23 they're citing cases from around the country. It's clear they
24 cherry-picked some cases where somebody was allowed to plead to
25 a misdemeanor and then they were sentenced to probation.

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1 That's simply not the case here. This case should not be
2 considered in connection with a Northern District of Illinois
3 case from six years ago, where somebody merely transferred
4 confidential documents to his personal e-mail account, and from
5 Mr. Bloch's submission, those documents were never used by
6 anybody. This is a different case. Information was stolen
7 from the PCAOB, and it was given to KPMG so they could use it
8 and so they could undermined the inspection process.

9 Now, I want to turn to Mr. Bloch's point about the
10 fact that Ms. Holder was an FBI agent and his argument that
11 we're trying to hold her to a higher standard. Your Honor,
12 that's simply not the case. The point of that is that
13 Ms. Holder was an FBI agent and she drew on her training as an
14 agent to help with the cover-up here. She suggested they get
15 burner phones. She suggested they use this Instagram code.
16 And she even coached Brian Sweet online in connection with the
17 internal investigation. And when she did that, she drew on her
18 experience as an FBI agent. I think Sweet testified that she
19 said, I invented the long pause, and she told him what to do if
20 there was a long pause.

21 So, your Honor, that's why we submit that the fact
22 that she was an FBI agent is important here, is significant,
23 because she used that training to obstruct justice in this
24 case.

25 Now, as to Mr. Bloch's point about deterrence, now,

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1 Mr. Bloch has said that the studies have shown that deterrence
2 is just a fear of getting caught. But, your Honor, we would
3 submit that the fear of getting caught is meaningful because
4 there's a fear of jail time. And he's asking for a
5 non-incarceratory sentence, an extraordinary sentence, when the
6 guidelines are 41 to 51 months. And just to be clear, we're
7 not asking for an incredibly long sentence. I think he cited
8 some studies that say that the length of the sentence isn't
9 what matters. Our main point is that a sentence of
10 incarceration is appropriate, because if there was a
11 non-incarceratory sentence, that would really send a message
12 that this was not a serious crime, that you can get away with
13 defrauding regulators, with undermining a safeguard put in
14 place by Congress, the PCAOB and its inspection process.

15 And just to reiterate, your Honor, Ms. Holder was
16 deeply involved in this fraud. She was a critical piece of
17 this case. She was the one getting the information from Wada.
18 And that's what makes her conduct especially problematic. Her
19 background in law enforcement only underscores how serious the
20 conduct is.

21 So we submit that a sentence of incarceration is
22 appropriate for deterrence, for KPMG and all the other auditing
23 firms, that they get a message that this kind of conduct will
24 not be tolerated.

25 THE COURT: Is the government seeking forfeiture in

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1 this case? I know there's restitution.

2 MS. ESTES: No forfeiture, your Honor.

3 THE COURT: OK. Thank you.

4 Ms. Holder, if there's anything you would like to
5 say -- I should say I've read your letter, which I found very
6 helpful. If there's anything you would like to say today, you
7 may. You are not required to, but you may.

8 THE DEFENDANT: Yes, sir. Is it OK if I read, your
9 Honor?

10 THE COURT: Yes.

11 THE DEFENDANT: Your Honor, I know I've already
12 written a letter to your Honor which expresses my thoughts and
13 feelings about my actions which bring me here today, but I want
14 to say to the PCAOB and KPMG that I'm sorry for the harm I
15 caused and that I was not worthy of the trust that they showed
16 me -- that they showed when they hired me. I don't know that I
17 will ever forgive myself for my mistakes, which ruined
18 everything that I worked for and all that I've done with my
19 life. I am deeply sorry. And I wish I had made the right
20 decisions when I had the chance. I also will forever regret
21 disappointing those who are closest to me. I fully understand
22 that life will not allow me to go back and fix what I've done
23 wrong, but it will allow me to try and live each day better
24 than the last. And that, your Honor, I will do.

25 I plead for the Court's mercy. Please, your Honor, I

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1 beg the Court for the chance to continue to serve others in my
2 hometown and be there for my family members, including my
3 sister-in-law. I feel that, through this, I will be able to
4 earn back my place in society and I hope, with time, my family
5 and others that I have hurt will forgive me.

6 Thank you, your Honor.

7 THE COURT: Thank you.

8 Is there any reason why sentence may not be imposed at
9 this time?

10 MS. ESTES: No, your Honor.

11 MR. BLOCH: No, your Honor.

12 THE COURT: In preparing to sentence the defendant,
13 I've considered the presentence report, the recommendation of
14 probation, the written and oral statements of defense counsel,
15 the defendant, and the government, and all the letters
16 submitted on behalf of the defendant. I have also considered
17 all the factors set forth in statute 18 U.S.C. § 3553(a). I
18 won't necessarily talk about all of them, but I've considered
19 all of them. And importantly, in addition to the purposes of
20 sentencing, I'm required to consider the nature and
21 circumstances of the offense, and the defendant's history and
22 characteristics.

23 I should also say that the submission by defense
24 counsel was extraordinarily effective in this case, as was the
25 presentation today.

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I am required to impose a sentence that is sufficient but not greater than necessary to comply with the sentencing purposes in the statute.

The criminal conduct in this case was serious. It was serious because it involved the corruption of a regulatory process, a process that was established by the Sarbanes-Oxley Act to ensure that audits of public companies are done accurately and independently. The PCAOB was established by Congress essentially as the meta auditor, the inspector of the country's auditors or the auditor of the auditors. Its inspection process is supposed to function with independence and integrity. And that process was compromised by the criminal conduct in this case.

This case was also serious simply because it involved a misappropriation of a company's property. It is different from many fraud cases because it did not involve the taking of money or tangible property. Instead it involved the taking and use of confidential information, the PCAOB's work product. And that was a serious crime with an actual loss. The PCAOB suffered the loss of hundreds of thousands of dollars in employee time.

This case is also different because it did not involve direct personal gain to the defendant. Again, unlike many other fraud cases that I see in this court, the defendant here was not misappropriating property to line her pockets, at least

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1 not directly. She was trying to help her employer, KPMG, do
2 better on inspections by its regulator.

3 In some respects, the fact that she was not motivated
4 by personal greed makes this defendant less culpable, less
5 blameworthy, than someone who simply steals from her employer,
6 or from someone else. And that is something that I think I
7 properly should take into account and I do take into account.
8 At the same time, this crime is serious in some ways precisely
9 because it is more subtle than stealing money. It involved a
10 corruption of a regulatory practice, a pattern of self-dealing,
11 essentially cheating, by employees of a regulated company to
12 give their company a leg up in the process. And it is clear
13 that the defendant, as a recent PCAOB employee, knew that it
14 was wrong and knew why it was wrong.

15 So it's a strange case. It's not like typical fraud
16 cases. At the same time, I think it's a serious offense here.
17 Defendant makes a good argument about other cases and the
18 importance of considering similarly situated defendants.
19 However, when you look at those other cases, the nature of the
20 information that was taken is much less significant. For
21 example, in one of the cases, the *Bansal* case, in the Southern
22 District, it involved a very small number of documents. It was
23 a one-time event. It was not something like the conduct here,
24 which involved documents and information taken over the course
25 of a long period of time under circumstances that clearly

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1 compromised a significant regulatory process of the PCAOB. So
2 I think it's a much more serious crime than those involved in
3 the cases mentioned by defense counsel.

4 I also need to consider the history and
5 characteristics of the defendant. And I take seriously my
6 obligation to consider that. The defendant here is someone who
7 clearly has many positive characteristics. I'm fully persuaded
8 of that. She's not only smart but she's worked extremely hard
9 in her life and in her career. She's a thoughtful and
10 considerate and caring person, and she has positively affected
11 many people in her life. She has not had an easy life in a lot
12 of ways. And I am taking all of that into consideration.

13 It is also important to consider the fact that she
14 accepted responsibility and has expressed remorse for her
15 conduct. I do not believe that this defendant poses any
16 significant risk of recidivism, and for that reason the
17 statutory purposes of specific deterrence and protecting the
18 public do not call for a guidelines sentence in this case.

19 In addition, of course, the significant punishment
20 imposed by the mere fact of a conviction is punitive and is
21 significant. In a case like this, the conviction alone will
22 have effects on the defendant's career and life. Clearly the
23 fact of this case has had a very negative impact. It's caused
24 significant amounts of stress on the defendant's life.

25 These factors that I've mentioned lead me to conclude

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1 that a guidelines sentence would be greater than necessary.

2 However, at the same time, this is a case where the seriousness
3 of the offense and in particular the need for general
4 deterrence call for real punishment. And for that reason I do
5 think that a sentence that includes incarceration is necessary
6 and appropriate here.

7 However, I am persuaded that a sentence significantly
8 below the guidelines, because of all of the balancing
9 counteracting factors that I've discussed, is warranted here.

10 Considering all this together, I have concluded a
11 sentence of a term of imprisonment of eight months is
12 sufficient but not greater than necessary to serve the purposes
13 of sentencing in the statute. I intend to impose a sentence of
14 eight months' imprisonment and two years' supervised release.

15 Let me ask, counsel, if you have any objection you
16 would like to state or any legal reason that that sentence may
17 not be imposed. Defense counsel?

18 MR. BLOCH: No, your Honor.

19 THE COURT: Government counsel?

20 MS. ESTES: No, your Honor.

21 THE COURT: Ms. Holder, would you please stand.

22 It is the judgment of this Court that you be committed
23 to the custody of the Bureau of Prisons for a period of eight
24 months. Following release, you will be placed on supervised
25 release for two years, with the following conditions: you not

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1 commit another federal, state, or local crime; you not possess
2 or use an illegal controlled substance. I am waiving the
3 mandatory drug testing condition because I find the defendant
4 poses a low risk of substance abuse. You will cooperate in the
5 collection of DNA as directed by probation.

6 The standard conditions are imposed, with the
7 following special conditions: you shall provide the probation
8 officer with access to any requested financial information.
9 You shall not incur any new credit charges or open additional
10 lines of credit without the approval of probation, unless
11 you're in compliance with the installment payment schedule.
12 You shall report to the nearest Probation Office within 72
13 hours of release. And you'll be supervised by the district of
14 residence.

15 I am not imposing a fine, in light of the restitution
16 obligation. Restitution will be ordered in an amount that I
17 will set at a later date after considering arguments about
18 possible allocation among defendants.

19 There is a mandatory \$100 special assessment on each
20 count, so a total of \$400, which is hereby imposed.

21 You will surrender to the facility designated by the
22 Bureau of Prisons on October 15, 2019, before 2 o'clock p.m. I
23 am making a strong recommendation to the BOP that you be housed
24 at the Bryan FPC Federal Prison Camp in Bryan, Texas, to
25 facilitate family visitation.

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1 You have the right to appeal from your conviction and
2 sentencing except to the extent that you have waived that right
3 as part of your plea and plea agreement -- as part of your
4 plea. There was no agreement.

5 If you are unable to pay the costs of appeal, you may
6 apply for leave to appeal in forma pauperis. Any appeal must
7 be filed within 14 days of the filing of judgment.

8 And I am directing that a complete copy of the PSR be
9 provided to the BOP and the Sentencing Commission. And the
10 Clerk will prepare the judgment.

11 Is there anything further?

12 MS. ESTES: Your Honor, I think we would just that
13 your Honor make clear if it's eight months on each count
14 concurrent? I just doesn't think that was clear.

15 THE COURT: Yes. Eight months on each of the four
16 counts to run concurrently, and also two years of supervised
17 release to run concurrently on all counts.

18 Thank you.

19 Is there anything further?

20 MR. BLOCH: No, your Honor.

21 MS. ESTES: No, your Honor. Thank you.

22 THE COURT: Thank you. We are adjourned.

23 (Adjourned)